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No. 93-650

In The

Supreme Court of the United States

October Term, 1993

STEVEN R. HOLLAND and GLENNYSS E. HOLLAND, husband and wife,

Petitioners,

v.

JOHN DEERE CO., a Delaware corporation; and FOUR COUNTY TRACTOR EQUIPMENT CO., a Texas corporation,

Respondents,

v.

DEERE & COMPANY,

Additional Party-Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

May a party against whom a properly supported motion for summary judgment is filed, and which in responding to the motion fails to appropriately demonstrate the existence of any specific, genuine issue of material fact, contrary to Rule 56(c), *F.R.Civ.P.*, and a local rule of procedure, subsequently complain that, consistent with Rule 56 and the local rule, the District Court deemed the material facts admitted, granted the motion, and dismissed the case?

RULE 29.1 STATEMENT

Deere & Company, Additional Party-Respondent, is the successor-in-interest of Respondent John Deere Company. Deere & Company has the following subsidiaries and affiliated entities:

John Deere Credit Company; John Deere Finance Limited; John Deere Insurance Group; John Deere Insurance Company of Canada; John Deere Health Care, Inc.; Deere-Hitachi Construction Machinery Corporation; John Deere S.A. de C.V. (Mexico); SABO Maschinenfabrik AG; SLC S.A. Industria e Comercio; Deere Marketing Services, Inc.; John Deere Catalog Company; John Deere Merchandise; National Sales Division; Power Systems Group; John Deere Capital Corporation; Deere Credit, Inc.; Deere Credit Services, Inc.; Farm Plan Corporation; John Deere Receivables, Inc.; John Deere Insurance Company; John Deere Life Insurance Company; John Deere Transportation Services, Inc.; John Deere Family Healthplan, Inc.; Heritage National Healthplan Services, Inc.; Heritage National Healthplan, Inc.; Heritage National Healthplan of Tennessee, Inc.

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RULES

In addition to Rule 56, *F.R.Civ.P.*, cited by Petitioners, the summary judgment from which they unsuccessfully appealed was entered pursuant to Rule 14(B) of the United States District Court for the Western District of Oklahoma. Rule 14(B) provides as follows (emphasis supplied).

> **(B) Summary Judgment Motions.** The brief in support of a motion for summary judgment (or partial summary judgment) shall begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts shall be numbered and shall refer with particularity to those portions of the record upon which movant relies. *The brief in opposition to a motion for summary judgment (or partial summary judgment) shall begin with a section which contains a concise statement of material facts as to which the party contends a genuine issue exists.* Each fact in dispute shall be numbered, shall refer with particularity to those portions of the record upon which the opposing party relies, and, if applicable, shall state the number of the movant's fact that is disputed. *All material facts set forth in the statement of the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the statement of the opposing party.*

STATEMENT OF THE CASE

Upon being confronted with a properly supported motion for summary judgment which was firmly anchored in fact and in law, the Petitioners failed and

neglected to establish the existence of any material factual issue worthy of presentation to a jury. Consequently, the District Court entered summary judgment in favor of the Respondents and dismissed the case, and the Court of Appeals affirmed. In each instance, the lower courts merely adhered to this Honorable Court's contemporary view of Rule 56, *F.R.Civ.P.*, and appropriately applied a local rule of summary judgment procedure, promulgated pursuant to Rule 83, *F.R.Civ.P.*

This Court's recent pronouncements with respect to Rule 56 sufficiently address and dispose of the question which the Petitioners have attempted to frame in seeking certiorari. Additionally, the Petitioners have ignored other matters which are sufficient to establish that judgment was appropriately entered against them. Consequently, the instant Petition for Certiorari should be summarily denied.

This case was a relatively routine diversity action for damages, sounding in common law tort, i.e., manufacturers' products liability.[1] Petitioner John Holland ("Holland") was the owner of a farm tractor manufactured by Respondent John Deere Company, predecessor-in-interest of Deere & Company (collectively, "Deere") and purchased by Holland from Respondent Four County Tractor Equipment Company ("Four County"). Born and reared on a farm, Holland had extensive previous experience with such heavy agricultural machinery, having owned at least twelve different tractors in his lifetime and being

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[1] Under Oklahoma law, this phrase encompasses all parties in the chain of distribution, including both manufacturers and suppliers. *Gonser v. Decker*, 814 P.2d 1056, 1059 (Okla.App. 1991).

accustomed to personally performing most of their maintenance requirements.

By reason of his previous experience, Holland understood and appreciated the necessity to be cautious – and to conform to conventional procedures – in operating and repairing heavy farm equipment. This was particularly so with respect to electrical aspects of such machinery. Indeed, in one particularly instructive instance, Holland had attempted to "by-pass" start a self-propelled swather (a machine which cuts and processes hay) with the machine "in-gear" (i.e., with its drive system engaged). This procedure had caused the swather to lunge and spin, creating a potentially dangerous situation. Additionally, and earlier on the day of the incident from which this litigation emanated, Holland had started his John Deere tractor by touching a handful of its electrical wiring to the tractor's broken solenoid bolt.

Holland therefore knew and understood – with respect to farm machinery in general and his John Deere tractor in particular – that placing a metal object in close proximity to the machine's solenoid bolt without disconnecting the battery cables or checking to determine whether the tractor was in gear was potentially hazardous and was a procedure specifically recommended against in the tractor owner's manual which Holland admittedly had read. Nevertheless, on August 22, 1989, Holland was working on his tractor from ground level, without disconnecting the battery cables and without determining whether the tractor was in gear. When he placed a pair of metal pliers near the starter solenoid, the machine abruptly started and ran over Holland, injuring him severely.

Asserting manufacturers' products liability, Holland and his wife ("Petitioners") sued Deere and Four County, seeking damages for his injuries and for Mrs. Holland's loss of consortium. The Petitioners alleged that the tractor was defective and unreasonably dangerous. They also contended that the Defendants had failed to warn them of a dangerous propensity of the machine which was claimed to be the cause of Holland's injuries.

During discovery, however, it became increasingly obvious that Petitioners' case was fatally flawed. Upon being deposed by the Respondents, Holland admitted that, *inter alia:*

1. He was *thoroughly* familiar with the operation and maintenance of heavy farm equipment in general and John Deere tractors in particular, having been involved in farming since he was a child.

2. He was *well aware of* the hazards inherent in experimenting with such machinery, having attempted to "cross-start" the hay swather without knowing what the consequences might be.

3. He made it a practice *always* to read the operations manual for *any* tractor he acquired, including the John Deere tractor at issue below.

4. He *knew,* on the day of his accident, that his tractor had a broken solenoid bolt, inasmuch as he had attempted, without success, to repair it.

5. Earlier that day, August 22, 1989, *in spite of his knowledge* that the tractor was in need of repair (and of his previous experience with the hay swather), Holland had started the tractor from ground level by touching battery

cables and other wires to the broken solenoid bolt. *Holland sustained his injuries later that same day, again while working at ground level, upon placing a pair of pliers in close proximity to the tractor's starter solenoid, without bothering to disconnect the battery cables or to ascertain whether the tractor was in gear.*

Based upon Holland's deposition testimony, Four County moved for summary judgment, asserting that, as a matter of undisputed fact: (1) the tractor was not the cause of Holland's injuries; (2) there had been no defect in the tractor when it left the Respondents' possession and was not unreasonably dangerous to Holland; and (3) either Holland had been given adequate warnings of any hazards inherent in the tractor or, alternatively, he was a "sophisticated user" of such machinery, so that no duty to warn was owed.

In a products liability action under Oklahoma law, such a showing is sufficient to defeat a claim for relief. Consequently, it was incumbent on the Petitioners to demonstrate that Four County's factual statements were either controverted or otherwise not outcome-determinative. *Petitioners failed abysmally to do so.* Indeed, and in total disregard of Rule 14(B) of the District Court, their untimely response to the motion for summary judgment consisted of mere rhetoric, i.e., unsubstantiated contentions of fact and of law.

Pursuant to Local Rule 14(B), the Petitioners' response was deemed to be an admission of Four

County's statement of undisputed facts.[2] Based upon those *undisputed* facts, the District Court properly determined that Four County was entitled to judgment as a matter of law. Additionally, summary judgment was entered in favor of Deere, *sua sponte*, inasmuch as Petitioners' case could not survive the admission of the matters they had failed to dispute. Petitioners moved for a new trial or in the alternative for a reconsideration of the District Court's order. In response, Deere argued authority from the Oklahoma Supreme Court that there was no duty to warn a sophisticated user of the tractor, such as the undisputed record proved Petitioner Holland to be. Deere also incorporated, pursuant to local rule, the pleadings and exhibits supporting Four County's Rule 56 motion. The District Court denied Petitioners' motion for new trial or alternative motion to reconsider. Seeing no necessity to entertain oral argument, the Court of Appeals affirmed the District Court's judgment of dismissal in an unpublished memorandum opinion.

SUMMARY OF ARGUMENT

In responding to the motion for summary judgment below, the Petitioners merely reargued their pleadings, rather than attempting to demonstrate the existence of material factual issues, as required by Rule 56(c), *F.R.Civ.P.*, and Rule 14(B) of the United States District

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[2] Such a local rule, promulgated pursuant to Rule 83, *F.R. Civ.P.*, has the force of law. *United States v. Hvass*, 355 U.S. 570, 573-78 (1958).

Court for the Western District of Oklahoma. The Petitioners' response to the motion was therefore properly deemed to be an admission of matters which, unless adequately controverted, were entirely sufficient to defeat their claim for relief. Consequently, neither any material factual issues nor any legitimate inferences therefrom remained in sufficient doubt to necessitate a trial, so that the Respondents were entitled to the summary judgment of dismissal.

ARGUMENT

A. Consistent with both the plain language of Rule 56 and this Court's prevailing precedents, the District Court properly determined that the Petitioners had failed to demonstrate the presence of factual disputes sufficient to preclude summary judgment.

For at least seven years, federal litigants have been on unequivocal notice that, when a motion for summary judgment is properly filed and documented, "its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Industrial Company v. Zenith Radio Corporation*, 475 U.S. 574, 586 (1986). On the contrary, and consistent with principles which were "not invented, but merely articulated" in *Matsushita* and related cases,[3] "the nonmoving party must come forward with 'specific facts showing that there is a *genuine issue for trial*.' " *Matsushita*, 475 U.S.

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[3] *Eastman Kodak Company v. Image Technical Services, Inc.*, ___ U.S. ___, 112 S.Ct. 2072, 2083, 119 L.Ed.2d 265, 285 (1992).

at 587, *quoting* Rule 56(e), *F.R.Civ.P.* (emphasis in original).

In the absence of such a "specific showing" of an issue of fact which is both legitimate and material, the federal courts have been admonished not to be reluctant to dispose of cases summarily, giving "due regard [to] the rights of persons opposing . . . claims . . . to demonstrate . . . that [they] have no factual basis." *Celotex Corporation v. Catrett*, 477 U.S. 317, 327 (1986).

The instant Petition contains a conspicuous scarcity of references to *Matsushita, Celotex, Anderson v. Liberty Lobby, Inc.*[4] and decisions of the lower federal courts in which that trilogy of cases has been applied. Had the Petitioners bothered to review such precedents (to say nothing of the District Court's own local Rule 14(B)), the insufficiency of their response to the motion for summary judgment would have been self-evident. Now, having failed to frame an adequate response to that dispositive motion, they perpetuate their error below by attempting to frame an issue here which is foreclosed by not only this Court's recent cases, *but also the Hollands' own admission of pivotal facts.*[5] Petitioners' arguments should not be indulged.

The Petitioners complain that the District Court erred in "reaching conclusory inferences in favor of [Respondents], based solely upon the discovery deposition testimony of [Petitioner Holland], particularly with respect to

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[4] 477 U.S. 242 (1986)

[5] Thus, the instant Petition contains none of the "special and important reasons" required by Rule 10.1 of this Court.

[Holland's] knowledge of a fact." *Petition* at 8. In their opinion,

> The district court should be limited in drawing inferences from the testimony of the nonmoving party during [his] deposition . . . without the benefit of other evidence to support the inference.

Id.

If the Petitioners mean to say, in submitting the foregoing argument, that a party may not seek summary judgment simply by challenging the non-moving party's evidence, such a contention is totally foreclosed by this Court's decisions in *Matsushita, Celotex* and *Anderson. See particularly Celotex,* 477 U.S. at 323-24. These precedents make it unmistakably plain that the movant need not negate the existence of *any* remote possibility that the non-movant might prevail at trial. It is sufficient to demonstrate "a complete failure of proof concerning an essential element of the nonmoving party's case." *Celotex,* 477 U.S. at 323. Such a showing "necessarily renders all other facts immaterial." *Id.*

Additionally, or in the alternative, it is far too late to argue that a District Court, in considering a motion for summary judgment, must search the record for *some* evidentiary basis upon which the non-movant might eventually be successful at trial. Certainly, a party opposing a motion for summary judgment is entitled to the benefit of *legitimate* doubt. *Matsushita,* 475 U.S. at 587-88, *quoting United States v. Diebold,* 369 U.S. 654 (1962). But, a District Court has no obligation to either search for or indulge

far-fetched inferences. Even "the strength of factual allegations such as subjective bad faith can be tested at the summary judgment stage." *Wyatt v. Cole*, ___ U.S. ___, 112 S.Ct. 1827, 1835, 118 L.Ed.2d 504, 517 (1992) (Kennedy, J., concurring).[6] "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.' " *Matsushita*, 475 U.S. at 587, *quoting First National Bank of Arizona v. Cities Service Company*, 391 U.S. 253 (1968).

In summary, therefore, the Petitioners' discomfiture with the District Court's disposition of the motion for summary judgment is at cross-purposes with specific pronouncements of this Court. Moreover, *and in the final analysis*, Petitioners' attempt to attribute the outcome below to impermissible factual inferences is completely beside the point. The summary judgment was the result not of inferences, but of admitted facts which conclusively defeated Petitioners' case.

B. In tendering an inadequate response to the motion for summary judgment, Petitioners utterly failed to meet and defeat undisputed facts which were fatal to their case.

In a manufacturers' products liability action based on Oklahoma law, a claimant must prove by a preponderance of the evidence that (1) the product in question was the cause of the claimant's injuries; (2) the product

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[6] Thus, and contrary to the contentions at pages 12-13 of the instant Petition, the mere presence of an issue relating to "a person's state of mind" does not preclude summary adjudication.

was defective at the time it came under the claimant's possession and control; and (3) the alleged defect rendered the product unreasonably dangerous. *Kirkland v. General Motors Corporation,* 521 P.2d 1353, 1366 (Okla. 1974); *see also Kelley v. Rival Manufacturing Company,* 704 F.Supp. 1039, 1042 (W.D. Okla. 1989).

"The fact that an unfortunate and regrettable injury occurs does not in itself create a presumption that a particular product is defective or unreasonably dangerous." *Kelley, supra,* 704 F.Supp. at 1044, *citing Bruce v. Martin-Marietta Corporation,* 544 F.2d 442 (10th Cir. 1976). Nor is a manufacturer under any duty to make its products *absolutely safe* from *every conceivable* potential hazard. *Kelley,* 704 F.Supp. at 1044, *citing Gates v. Ford Motor Company,* 494 F.2d 458 (10th Cir. 1974). "Nor is there an obligation to make a 'fail-safe' product." *Kelley,* 704 F.Supp. at 1044, *citing Stuckey v. Young Exploration Company,* 586 P.2d 726 (Okla. 1978). *See also Cox v. Murray Ohio Manufacturing Company,* 732 F.Supp. 1555, 1560-61 (W.D. Okla. 1977). To the contrary, to make out a *prima facie* case of manufacturers' products liability under Oklahoma law, "A plaintiff not only must prove that there actually was a defect in the product, but also must show that the defect caused the particular injury in question. Causation ' . . . beyond a mere possibility must be shown.' " *Kelley,* 704 F.Supp. at 1044, *quoting Kirkland v. General Motors Corporation,* 521 P.2d at 1366 (emphasis omitted). "The mere possibility that the product caused the injury is not enough." *Blair v. Eagle-Picher Industries, Inc.,* 962 F.2d 1492, 1495-96 (10th Cir. 1992).

Thus, and in order to defeat the motion for summary judgment, Petitioners were obligated to come forward

with evidence that Holland's injuries were caused by some specific defect in the tractor which rendered the machine unreasonably dangerous. Alternatively, and in the absence of proof that the tractor was defective when it left the Respondents' control, Petitioners' burden was to show that the tractor (1) was nevertheless unreasonably dangerous; (2) that there was a duty to warn of such a dangerous propensity; and (3) that the failure to warn was the cause of Holland's injuries. *Duane v. Oklahoma Gas & Electric Company*, 833 P.2d 284, 285-86 (Okla. 1992); *Smith v. United States Gypsum Company*, 612 P.2d 251, 253-54 (Okla. 1980).

Before, however, such an alleged failure to warn can become a predicate for manufacturers' products liability, the claimant must prove that a duty to warn existed. *Duane, supra*, 833 P.2d at 285-86. No such duty is owed to a knowledgeable or sophisticated user of the product in issue, nor does such a duty arise if a product-connected danger is obvious or actually known. *Id.*

Invoking the foregoing principles, the summary judgment motion fully exposed fatal deficiencies in the Petitioners' case. Specifically, the motion submitted that, as a matter of undisputed fact:

1. The John Deere tractor was *not defective* when Holland took possession of it, inasmuch as the accident in question related to the subsequently broken solenoid bolt, of which Holland was admittedly and completely aware.

2. Holland also was, by his own sworn admission, *an experienced, knowledgeable and sophisticated owner and*

operator of heavy farm machinery, with specific knowledge of the dangerous propensities of such machinery.

3. Holland also admitted that he had read, was familiar with and professed to understand the operations manual for the tractor, which addressed appropriate – and safe – operating procedures.

4. Additionally, having had his previous encounter with the hay swather which he had attempted to "bypass-start," Holland had *specific prior knowledge of the risk of attempting such an unconventional, non-recommended procedure.*

Thus, the summary judgment motion was supported by evidence – *indeed, Holland's own sworn testimony* – sufficient to conclusively defeat the Petitioners' claim. Axiomatically, the burden shifted to the Petitioners to establish the existence of "genuine factual issues that properly [could] be resolved only by a finder of fact because they [could] reasonably be resolved in favor of either party." *Anderson,* 477 U.S. at 250. Petitioners utterly failed to do so; indeed, and assuming, *arguendo,* that error of any kind occurred, Petitioners *invited it* by failing to attempt to controvert the motion in compliance with local Rule 14(B). Their response, deficient as a matter of fact and of law, left the District Court with no alternative other than to enter summary judgment, inasmuch as the admitted facts foreclosed recovery as to any of the Respondents.

In summary, the District Court was thoroughly justified in concluding – as was the Court of Appeals in affirming, summarily – that all of the Respondents were entitled to a judgment of dismissal as a matter of law.

That conclusion was the result not of an erroneous indulgence of impermissible inferences, but rather of a comprehensive failure of proof which rendered the outcome of the case inevitable. Under such circumstances, this Court has emphasized that summary adjudication is in order. "[T]he inquiry . . . is . . . whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52.

CONCLUSION

The decisions of the District Court and of the Court of Appeals were entirely consistent with controlling law and procedure and were the appropriate result of a failure of proof for which the Petitioners were entirely responsible. Accordingly, their Petition for Certiorari should be denied summarily.

Respectfully Submitted,

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